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Supreme Court of the United States

OCTOBER TERM, 1943

NO. 798

J. S. GARLINGTON and JENNIE LOU GARLINGTON,
Petitioners,

vs.

A. L. WASSON,
Respondent.

PETITION AND BRIEF.

For a Writ of Certiorari to the United States Circuit Court Of Appeals for the Fifth Circuit.

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PETITION

For a Writ of Certiorari to the United States Circuit Court Of Appeals for the Fifth Circuit.

The brief in support of this petition begins at page 8, all emphasis in this petition and in the following brief is supplied.

To the Honorable Harlan Fiske Stone, Chief Justice, and the Associate Justices of the Supreme Court of the United States:

Your petitioners respectfully show:

I.

A Summary Statement of the Matter Involved.

There is involved the dismissal of the petitioners proceeding without action upon their amended petition filed under Section 75 (s).

The statute concerned is Section 75 of the Bankruptcy Act known as the farmer debtor law, more particularly Section 75 (s), 11 USC 203 (s).

The decision of the appellate court below is reported as *Garlington* v. *Wasson,* CCA 5, December 9, 1943, 139 Fed. (2d) 183, and it appears at R. 90 to 92. The judgment of the appellate court is at R. 93.

The final order of the district court, which was appealed, is at R. 49 to 50. There was no opinion.

Stated in a very condensed form the question involved is whether when a farmer debtor's amended petition under Section 75 (s) is duly filed the court may refuse to administer the statutory proceeding under it.

The petitioners filed their petition under Section 75 (a) to (r) for composition or extension (R. 1 to 19) without achieving either. A conditional order of dismissal was entered on October 25, 1939, with leave "to amend their petition" and proceed under Section 75 (s). R. 20 to 21. That part of the order relating to the filing of an amended petition is its last paragraph at the top of R. 21. **This is the usual course of procedure after a proposal under Section 75 (a) to (r) has failed of acceptance and the case is ready for the filing of an amended petition under Section**

75 (s). That is an order of dismissal is entered containing a proviso that an amended petition may be filed within a stated time.

The petitioners promptly filed their amended petition on the same day the conditional order of dismissal was entered. R. 21 to 39. The file mark and date is at R. 39. This petition lay dormant in the district court without adjudication and without reference to a conciliation commissioner for administration.

On January 14, 1943, the judge of the court made an order, apparently upon the court's own initiative, (later referred to as "the order of January 14, 1943") which was entered on January 22, 1943, finding, **contrary to the court's own docket** and files that no amended petition had ever been filed. R. 75, paragraph (3). It again conditionally dismissed the proceeding with leave to petitioners to file an amended petition "by the first day of February 1943", R. 76, top of page.

On February 1, 1943, the date named in that order, the farmer debtors, in deference to the finding and order of the court, but expressly adhering to their previously filed amended petition, filed another amended petition under Section 75 (s). R. 47 to 49. The file mark and date is at the middle of R. 49. The following is quoted from it:

> "They further say that on October 6th, 1939, they submitted to the conciliation Commissioner appointed by this Court **their amended petition** under said Section 75, subsection (s), **which was filed in this Court on Oct. 25, 1939, but by his order dated January 14th, 1943, the Judge of this Court found and held that no amended petition was filed herein and therefore out of caution this amended petition is filed** in compliance with the said order of January 14th, 1943, that such an amended

petition under said Section 75, Subsection (s), be filed by February 1, 1943, **nor is former amended petition under said Section 75 (s) withdrawn.**" R. 47 to 49.

On March 5, 1943, the district court entered the order appealed from. It denied the right to file the amended petition, which had already been filed in compliance with the express order of the court, stating that such petition having been "presented to the clerk, be stricken, and that this case, having been heretofore dismissed, no further proceedings be had." R. 49 to 50. **The case had not been previously dismissed.**

From this order of dismissal an appeal was taken by the petitioners. R. 50 to 51. And the appellate court affirmed the dismissal although it disagreed with the facts as found by the district court. Opinion: R. 90 to 92. Judgment: R. 93.

This petition for certiorari is to obtain a review of the judgment at R. 93 affirming the final order of the District Court at R. 49 to 50.

II.

Statement of the Basis of the Jurisdiction of this Court.

The jurisdiction of this court is conferred by Section 240 (a) of the Judicial Code; 28 USC 347 (a).

The petitioners have complied with Section 8 (a) of the Act of February 13, 1925; 28 USC 350. The final judgment of the appellate court below which was entered on December 9, 1943 (R. 93) became final on January 12, 1944, when a petition for rehearing was denied. (R. 100). This petition is filed within three months thereafter. The man-

date of the Appellate Court has been stayed to March 21, 1944.

III.

The Questions Submitted.

1.

When a farmer debtor has duly filed in the bankruptcy court his amended petition under Section 75 (s) of the Bankruptcy Act, 11 USC 203 (s), and he did so pursuant to an order of the bankruptcy court, may that court dismiss his proceeding on the alleged ground that no amended petition was ever filed?

2.

When a farmer debtor has duly filed in the bankruptcy court his amended petition under Section 75 (s) of the Bankruptcy Act, 11 USC 203 (s), and he did so pursuant to an order of the Bankruptcy Court, and the Court fails to act thereon, may the proceeding be dismissed on the alleged ground that it was the duty of the farmer debtor to activate either the judge or the conciliation commissioner, and also his duty to seek appraisal, exemptions and possession, before any hearing or creditors meeting was called or held?

3.

When a bankruptcy court has neglected to act upon a farmer debtor's amended petition duly filed under Section 75 (s) in compliance with an order of the court, may the court deny the right to proceedings under it and dismiss

the cause on the ground that "the benefits of subsection (s) have been substantially enjoyed?"

IV.

Reasons Relied Upon for the Allowance of The Writ of Certiorari.

1.

The decision below is in violation of the express provisions of Section 75 (s).

2.

It is in conflict with the decision in *Wright* v. *Logan*, 1942, 315 U.S. 139 in this that, like the decisions of the lower courts in that case, it held that a farmer debtor should be deprived of the benefits of Section 75 (s) because the bankruptcy court decided that as the court had kept the proceeding before it without action the farmer debtor thereby had the substantial benefits of the statute.

3.

It is in conflict with *John Hancock* v. *Bartels*, 1939, 308 U.S. 180, which held that when a farmer debtor has duly filed his amended petition under Section 75 (s) the bankruptcy court is without power to refuse to proceed under it and dismiss the case.

4.

In holding that if a first amended petition under Section 75 (s) is ignored by the bankruptcy court a second may be denied it is in conflict with *Wragg* v. *Federal*, 1943, 317 U.S. 325.

5.

It is contrary to the universal administration of farmer debtor cases in all of the other circuits subsequent to *Wright* v. *Logan*, 1942, 315 U.S. 139, and it is an exception to the course of procedure in the same Circuit subsequent to the decision in *Wragg* v. *Federal*, 1943, 317 U.S. 325, which corrected the practice followed there.

Wherefore your petitioners pray that a writ of certiorari may issue to the Fifth Circuit Court of Appeals and that this cause may be reviewed and determined by this court and for such other relief as may be proper.

February 26, 1944
Lima, Ohio

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NO.

J. S. GARLINGTON and JENNIE LOU GARLINGTON,
Petitioners,

vs.

A. L. WASSON,
Respondent.

BRIEF.

In Support of the foregoing Petition for a Writ of Certiorari.

The subject index will be found preceding the petition for certiorari.

I.

The Report of the Decision Below.

The opinion below is reported as *Garlington* v. *Wasson*, 139 Fed. (2d) 183. In the record it appears at R. 90.

In the district court no opinion was rendered. The final order is found at R. 49 to 50.

II.

Grounds on Which the Jurisdiction of This Court Is Invoked.

The basis for the jurisdiction of this court has been stated at page 4 of the preceding petition for certiorari.

III.

A Statement of the Case.

It is believed that the following schedule of the procedure in the case is a sufficient statement of it.

July 26, 1939 R. 1 to 20. Petition filed under Section 75 (a) to (r) for composition or extension and referred to a conciliation commissioner. R. 1 to 20.

October 25, 1939 R. 20 to 21, R. 21 to 39. On report of no conciliation a conditional order of dismissal was entered, **saving the right to file an amended petition** pursuant to Section 75 (s). R. 20 to 21.

An amended petition under Section 75 (s) was filed on the same day. R. 21 to 39. The filing date is found at R. 39.

January 22, 1943 R. 75 and 76. Order entered (dated January 14, 1943 and subsequently referred to as "the order of January 14, 1943"), apparently on the court's own initiative. It begins: "On this, the 14th day of January, A.D. 1943, the court reviewed the entire file."

Finding:

1. The case was filed July 26, 1939;

2. No composition or extension was effected;

3. **"No amended petition has been filed in this cause;"**

(This finding is contrary to the court's own record. R. 21 to 39, filing date at R. 39.)

4. "More than 90 days have elapsed since the first creditors' meeting;" (referring to G.O. 50(4))

5. A certain Section 11 of land should be abandoned;

6. "The farm debtor is granted permission to seek the benefits of Subsection (s), Section 203, Title 11, U.S.C.A., provided his amended petition is filed before the 1st day of February, 1943;"

And Ordering:

(After abandoning the Section 11 of land),

> **"It is Further Ordered, Adjudged, and Decreed by the court that this proceeding should be and the same is here and now in all things dismissed. However the farm debtor may seek the benefits of Subsection (s) of Section 203, Title 11, U. S. C. A. if he so elects and if he files his petition by the first day of February 1943."**

This is the order sometimes referred to in the record as "the order of January 14, 1943." It is at R. 75 and 76.

February 1, 1943 R. 47 to 49. This second amended petition under Section 75 (s) was filed without abandoning their amended petition already pending. R. 47 to 49. This petition contained the following statement:

> "They further say that on October 6th, 1939, they submitted to the Conciliation Commissioner appointed by this Court **their amended petition** under Section 75, Subsection (s), **which was filed in this Court on Oct. 25, 1939, but by his order dated January 14th, 1943, the Judge of this court found and held that no amended petition was filed herein and therefore out of caution this amended petition is filed** in compliance with the said order of January 14th, 1943, that such an amended petition under said Section 75, Subsection (s), be filed by Feb. 1, 1943, **nor is former amended petition under said Section 75 (s) withdrawn.**"

March 5, 1943 R. 49 to 50. On this date the final order was entered which was appealed. It denied the right to file an amended petition and recited that the case had theretofore been dismissed. It is at R. 49 and 50. This order reads as follows:

> "On this 2 day of March, 1943, it is Ordered that the Debtor, J. S. Garlington, **be denied the right to file his Amended Petition** in Bankruptcy, and that **such petition, having been presented to the Clerk, be stricken, and that this case, having been heretofore dismissed, no further proceedings be had herein.**
>
> The court finds, among other facts, that the Debtor has not heretofore prosecuted his case as required by law and General Order No. 50, Subdivision 4, and that this proceeding was instituted more than three years prior to the date of this order, and more than three years prior to the filing of the Amended Petition." Although this entry refers to the petitioners in the singular, all papers filed and all actions taken in the case pertained to "J. S. Garlington and Jennie Lou Garlington."

The appeal, R. 50, the decision and order below R. 90 to 93, and the petition for certiorari stem from this final order.

December 9, 1943 R. 90 to 93. The opinion of the appellate court held:

> "The filing of the first amended petition was timely, and a matter of right. *John Hancock Co.* v. *Bartels*, 308 U.S. 180. But the farmer debtors were not automatically entitled to the benefits of the Subsection (s). They ought to have brought the amendment to the attention of the judge, or of the conciliation commissioner who acts as referee in bankruptcy under Section (s) (4), so that they might be adjudged bankrupts and the machinery of Subsection (s) be put into action. This amended petition did not pray for an appraisal of the property and the setting aside of any to be possessed by the bankrupts under the supervision of the court. It does not appear that such a request was ever made. Under Subsection (s) it takes a request by the bankrupt to secure this relief, and it would seem that the request must be made along with the amendment of the petition or at the first meeting of creditors. Since there was no adjudication,we presume there was no meeting of creditors. Wasson was the only creditor giving trouble, and he was at once separated from the impending bankruptcy, as has been stated. Everyone else seems to have been satisfied in some way, possession of 1000 acres of land was peaceably enjoyed for three years, and then voluntarily surrendered by sales. It seems that the benefits of Subsection (s) have been substantially enjoyed, except as touching Wasson and his land. General Order 50 (4) does not appear to be involved, but we think the judge was warranted in holding that the amended petition, never having been even prosecuted to an adjudication, was not prosecuted according

to law, but was abandoned, and ought not to be revived to enable the petitioners to attempt to have another three years to redeem the Wasson land." R. 91 to 92, the paragraph beginning at the bottom of R. 91 and ending at the middle of R. 92.

IV.

Specification of Errors.

1.

The appellate court below erred in holding that the farmer debtors "were not automatically entitled to the benefits of Subsection (s)" upon the filing of their amended petition under Section 75 (s), first unnumbered paragraph. That paragraph provides that a farmer debtor "may amend his petition . . . asking to be adjudged a bankrupt." Their amended petition, filed on October 25, 1939, expressly prayed that they "be adjudged by the court to be a bankrupt." R. 21, at R. 22, last paragraph. Holding of appellate court, R. 90 at R. 91, bottom of page.

2.

The appellate court below erred in holding that the farmer debtors should have "brought the amendment to the attention of the judge, or of the conciliation commissioner," referring to their said amended petition filed October 25, 1939, under Section 75 (s). Such holding was erroneous because they duly filed their amended petition pursuant to statute, and in compliance with the court's order, and therein they prayed the court to adjudicate them

bankrupt; and further such holding was erroneous because the court never entered any adjudication and never referred the amended petition to a conciliation commissioner.

3.

The appellate court erred in inferentially holding that prior to the first creditors' meeting subsequent to the filing of their amended petition under Section 75 (s) they were required to request an appraisal of their property and to request possession for three years. Such holding is erroneous because it conflicts with Section 75 (s), first unnumbered paragraph, which provides for such a request to be made at the time of such first hearing. Opinion of the appellate court: R. 92, top of page.

4.

The appellate court erred in holding that because there was no adjudication and no reference to a conciliation commissioner and therefore no creditors' meeting at which a request for appraisal, stay and possession could be made, as provided by statute, nevertheless the farmer debtors should have asked in their amended petition for such an order in anticipation of the failure of the bankruptcy court to perform that court's duty. Opinion of the appellate court, R. 92, first half of page.

5.

The appellate court erred in holding in relation to the state of this case that "It seems that the benefits of sub-

section (s) have been substantially enjoyed'' by the farmer debtors, in the face of the fact that no adjudication was ever entered and no proceeding ever had under subsection (s). Opinion of the appellate court, R. 92, middle of the page.

6.

The appellate court erred in holding that because no adjudication was ever entered by the court, therefore the farmer debtors failed to prosecute their case but abandoned it, whereas the court itself failed to administer the act by failing to take any step whatsoever as prescribed by statute.

7.

The bankruptcy court could not deny to the farmer debtors the right to file their amended petition under Section 75 (s) after they failed to achieve composition or extension under Section 75 (a) to (r).

8.

The bankruptcy court could not dismiss the farmer debtor proceeding while they had on file their amended petition under Section 75 (s).

9.

The bankruptcy court, as shown by its own record erred in finding in its order of January 14, 1943, that no amended petition had been filed prior to January 14, 1943.

10.

The bankruptcy court erred in making a finding in its order of January 14, 1943, that more than ninety days had elapsed after the date of the first creditors' meeting for the reason that such finding was irrelevant. There is no ninety day provision relating to the filing of an amended petition under Section 75 (s) where no composition or extension has been attained under Section 75 (a) to (r).

The making of such a finding was erroneous also because the court's own record showed that the amended petition was filed on October 25, 1939, less than ninety days from any creditors' meeting that could have been held pursuant to the order of reference on July 26, 1939 in view of the recital in the court's own order at the top of R. 21 showing that the statutory steps had been taken within a total of niney-one days from the order of reference and the filing of the amended petition.

It was erroneous also because said amended petition was filed pursuant to the court's own order entered October 25, 1939, at the top of R. 21 and on the same day that that order was entered, October 25, 1939.

11.

The bankruptcy court erred in its order of March 5, 1943, in denying to the petitioners the right to file their amended petition whether the "amended petition" referred to was the first one which was filed on October 25, 1939, (R. 21 to 39) or the second one filed February 1,

1943 (R. 47 to 49). The first one was filed pursuant to explicit statutory authority in the first unnumbered paragraph of Section 75 (s) and also it was filed pursuant to the express order of the court entered on the same day, October 25, 1939. R. 21. R. 21 to 29. File date of amended petition: R. 39. The second one was filed on February 1, 1943, pursuant to another express order of the court. Order: R. 75, at the top of R. 76. Amended petition: R. 47 to 49. Filing date of that amended petition: R. 49.

12.

The bankruptcy court erred in its order of dismissal entered March 5, 1943, in holding that the case had already been dismissed. It was error because the order of that court of January 14, 1943, which was entered January 22, 1943, (R. 75 to 76), explicitly made such dismissal subject to the right to file an amended petition under Section 75 (s). R. 76, top of page.

13.

The bankruptcy court erred in its order of March 5, 1943, in ordering that no further proceeding be had in the case. R. 49, first paragraph at foot of page.

14.

The bankruptcy court erred in its order of March 5, 1943, in finding that the farmer debtors had not prosecuted their

case pursuant to General Order No. 50, Subdivision 4. That General Order is not applicable where no composition or extension has been accepted.

15.

The bankruptcy court erred in finding in its order of March 5, 1943, that the case was instituted more than three years prior to the filing of the amended petition because the court's own record shows that the case was instituted on July 26, 1939 (R. 1 to 19, filing date at R. 19) and the amended petition was filed less than three months thereafter on October 25, 1939. R. 21 to 39, filing date at R. 39.

V.

Summary of the Argument.

It is the elementary statutory right of a farmer debtor to have his case administered by the bankruptcy court when he files his amended petition under Section 75 (s). The decisions below have denied that right.

VI.

ARGUMENT.

The situation in *Wright* v. *Logan*, 1941, 315 U.S. 139, is essentially not unlike that in this Garlington case. As stated in the opinion in that case it was this:

Pages 140 and 141:

> ". . . the petitioners filed an amendment alleging this failure to obtain composition or extension under Section 75 (a) to (r), and asking that the court adjudicate them bankrupt under 75 (s), which provides: 'Any farmer failing to obtain the acceptance of a majority in number and amount of all creditors whose claims are affected by a composition or extension proposal . . . may amend his petition or answer asking to be adjudged a bankrupt.'
>
> Although the petitioners' allegations brought them squarely within the language of 75 (s), the District Court ordered that the amended petition be denied; that the proceeding be dismissed; that the mortgagee's successors in interest be permitted to exercise rights as owners under the foreclosure; that the deed issued to the mortgagee by the state master in chancery after the bankruptcy proceedings had begun be given full force and effect; and that possession of the forty acres be surrendered to the respondent. The Circuit Court of Appeals affirmed, 119 Fed. 2d 354, holding that 75 imposes upon farmer debtors duties corresponding to the privileges conferred; that if a farmer debtor fails to prosecute his composition proceedings to a conclusion within a reasonable time, the court can deny him the privilege of adjudication under 75 (s); and that

> although these farmer debtors had filed under other subsections of 75 they had already enjoyed all the benefits to which they would have been entitled under 75 (s), and therefore were not entitled to obtain a repetition of those benefits by what the court thought was a mere formal change in their petition."

Although the bankruptcy court in *Wright* v. *Logan* had kept the proceeding before it for five years, from 1935 to 1940, this court held that it could not decline to administer the case fully under the statute.

The simple fact is that the Garlington farmer debtors on October 25, 1939, carefully complied with both the statute and the order of the court, entered the same day, by filing their amended petition praying for adjudication as farmer debtor bankrupts and for the benefits of Section 75 (s). R. 21 to 23. For the filing date see R. 39. For the court order in compliance with which it was filed see R. 20 to 21. For the statutory provision see the first sentence of Section 75 (s).

But the bankruptcy court occupied itself with other procedure, and neglected the administration prescribed by the statute. No adjudication was made and no order of reference was entered. The only notice it took of the amended petition was the so-called "Order of January 14, 1943," actually entered January 22, 1943, which declared that it had never been filed. R. 75, paragraph numbered (3). And to tempt the farmer debtors to abandon it and file another. R. 75, paragraph (6). R. 76, top of page.

Of course the practical result of such an abandonment would have been that the status quo of the estate as it existed upon the filing of their amended petition invoking Section 75 (s) would have been destroyed.

Out of deference to the order with its deadline of "the first day of February, 1943" (R. 76, top of page) but expressly adhering to their amended petition already filed, they filed another on that date. R. 47 to 49. Their reference to their original amended petition is in the last paragraph on R. 48. The filing date is at R. 49.

Then, notwithstanding that it had expressly admonished the farmer debtors to file an amended petition and that they had obediently complied, the bankruptcy court by its order dated March 2 and entered on March 5, 1943, ordered, (R. 49 to 50):

> "On this 2 day of March, 1943, it is Ordered that the Debtor, J. S. Garlington, be denied the right to file his amended petition in Bankruptcy, and that such petition, having been presented to the Clerk, be stricken, and that this case, having been heretofore dismissed, no further proceedings be had herein.
>
> The Court finds, among facts, that the Debtor has not heretofore prosecuted his case as required by law and General Order No. 50, Subdivision 4, and that this proceeding was instituted more than three years prior to the date of this order, and more than three years prior to the filing of the Amended Petition."

The statement, "this case having been heretofore dismissed" is wholly gratuitous and unsupported by the facts. From the filing of the original petition for composition or extension under Section 75 (a) to (r) (R. 1 to 20) up to the entry of this order on March 5, 1943, the case was continuously pending in the court.

The further statement that:

> "the Debtor [meaning the farmer debtors, "J. S. Garlington, Jennie Lou Garlington." See their petition and signatures at R. 1 and 2; their amended petition

and signatures at R. 21 and 22; and their petition and signatures at R. 47 and 48] has not prosecuted his case as required by law and by General Order No. 50, Subdivision 4."

is likewise gratuitous. The amended petition at R. 21 to 23 was filed strictly pursuant to the first sentence of Section 75 (s) and also in compliance with the order of October 25, 1939, on the same date on which that order was entered. The order: R. 20 to 21. And General Order 50 (4) does not relate to Section 75 (s) but to the confirmation of a proposal for composition or extension under Section 75 (a) to (r).

The order ignores the pending amended petition (R. 21 to 23) and would transfer to the farmer debtors the onus of the bankruptcy court's failure to observe the mandatory provisions of Section 75 (s) for its administration by the further statement that

"this proceeding was instituted . . . more than three years prior to the filing of the amended petition."

The amended petition which the order refers to is of course the one filed February 1, 1943, pursuant to the court's own order of "January 14, 1943" entered January 23. R. 76, top of page. R. 47 to 49.

In the appellate court it was conceded that the original amended petition at R. 21 to 23 "was timely and a matter of right" citing *John Hancock* v. *Bartels*, 308 U.S. 180. R. 91, bottom of page. Then the appellate opinion proceeds to nullify that right by holding:

R. 91 to 92:

"But the farmer debtors were not automatically entitled to the benefits of Subsection (s). They ought to have brought the amendment to the attention of the

judge, or of the conciliation commissioner who acts as referee in bankruptcy under Subsection (s) (4), so that they might be adjudged bankrupts and the machinery of subsection (s) be put into action. This amended petition did not pray for an appraisal of the property and the setting aside of any to be possessed by the bankrupts under the supervision of the court. It does not appear that such a request was ever made. Under Subsection (s) it takes a request by the bankrupt to secure this relief, and it would seem that the request must be made along with the amendment of the petition or at the first meeting of creditors. Since there was no adjudication, we presume there was no meeting of creditors. Wasson was the only creditor giving trouble, and he was at once separated from the impending bankruptcy, as has been stated. Everyone else seems to have been satisfied in some way, possession of 1000 acres of land was peaceably enjoyed for three years, and then voluntarily surrendered by sales. It seems that the benefits of Subsection (s) have been substantially enjoyed, except as touching Wasson and his land. General Order 50 (4) does not appear to be involved, but we think the judge was warranted in holding that the amended petition, never having been even prosecuted to an adjudication, was not prosecuted according to law, but was abandoned, and ought not to be revived to enable the petitioners to atempt to have another three years to redeem the Wasson land."

Apropos of the foregoing statements it may be said:

1. Upon the filing of an amended petition under Section 75 (s) the farmer debtor is entitled to its benefits.

John Hancock v. *Bartels*, 1939, 308 U.S. 180.

Gray v. *Union Joint Stock Land Bank*, 1939, 308 U.S. 524;

Morrison v. *Federal Land Bank*, 1939, 308 U.S. 524;
Borchard v. *California Bank*, 1940, 310 U.S. 311;
Wright v. *Union Central*, 1940, 311 U. S. 262;
Wright v. *Logan*, 1942, 315 U.S. 139;
Mangus v. *Miller*, 1942, 315 U.S. 144;
Wragg v. *Federal*, 1943, 317 U.S. 325.

The first part of the foregoing quotation from the appellate court's opinion (at the bottom of R. 91) reads like the opinion of the appellate court which was reversed in *Wright* v. *Logan*. That opinion is here quoted from the last paragraph of the opinion of the appellate court *In re* Wright, CCA 7, 119 Fed. (2d) 354:

> "We are convinced that the privileges conferred upon the debtor by this remedial statute impose upon him a corresponding duty to move expeditiously in order to avail himself of its benefits. Certainly it [Section 75] cannot be construed to permit him to allow his proceeding to lie dormant for years, and then, after expressly promising to surrender possession of the premises involved if he does not pay up within a specified time, invoke its benefits."

The Garlington farmer debtors brought themselves and their property into the bankruptcy court under Section 75 (s) pursuant to the statute:

> "Any farmer failing to obtain the acceptance of a majority in number and amount of all creditors whose claims are affected by a composition and/or extension proposal, or if he feels aggrieved by the composition and/or extension, may amend his petition or answer, asking to be adjudged a bankrupt." Section 75 (s), first sentence.

2. They brought their amended petition to the attention of the judge by filing it not only pursuant to the statute just quoted but in compliance with the proviso in the court's order that it was:

> "without prejudice to the right of the debtors to amend their petition and proceed under the Bankruptcy Act, as therein provided." R. 21, top of page.

This amended petition prayed for adjudication and for the benefits of Section 75 (s). R. 21 to 23. And they filed it on October 25, the same day that the order was entered. Date of entry of order: R. 21. Date of filing amended petition: R. 39.

3. Farmer debtors under Section 75 (s) are not required to request appraisal of their property and for exemption, etc., until the first meeting of creditors:

> "Such farmer may, at the same time, or **at the time of the first hearing**, petition the court that all of his property . . . be appraised, and that his . . . exemptions, . . . be set aside to him, and that he be allowed to retain possession, . . . under the terms and conditions set forth in this section." Section 75 (s), second sentence.

The appellate court opinion answers itself by saying:

> "Under Subsection (s) it takes a request by the bankrupt to secure this relief, and it would seem that the request must be made along with the amendment of the petition or **at the first meeting of creditors.** Since there was no adjudication, we presume there was no meeting of creditors."

4. Regarding the statement that:

> "Wasson was the only creditor giving trouble, and he was at once separated from the impending bankruptcy, as has been stated. Everyone else seems to have been satisfied in some way, possession of 1000 acres of land was peaceably enjoyed for three years, and then voluntarily surrendered by sales. It seems that the benefits of Section (s) have been substantially enjoyed, except as touching Wasson and his land."

Such expression has been directly repudiated by *Wright* v. *Logan*, 1942, 315 U.S. 139. Also by *Borchard* v. *California Bank*, 1940, 310 U.S. 311.

The last part of the expression just quoted from the appellate court below is a paraphrase of the attitude of the lower courts in *Wright* v. *Logan*, as stated by this court in its opinion at page 141, as follows:

> ". . . that although these farmer debtors had filed under other subsections of 75, they had already enjoyed all the benefits to which they would have been entitled under 75 (s), and therefore were not entitled to obtain a repetition of those benefits by what the court thought was a mere formal change in their petition."

A holding which this court then proceeded to reverse.

5. The statement that:

> "we think the judge was warranted in holding that an amended petition, never having been even prosecuted

> to an adjudication, was not prosecuted according to law, but was abandoned, and ought not to be revived to enable the petitioners to attempt to have another three years to redeem the Wasson land."

is likewise contrary to the decisions of this court. As in *Borchard* v. *California,* 1940, 310 U.S. 311, and in *Wright* v. *Logan,* 1942, 315 U.S. 139, the delay was the delay of the bankruptcy court itself and not of the farmer debtors.

6. The crux of the statement just quoted from the lower court's opinion, and of the whole case, is in these words of it which read:

> "ought not to be revived to enable the petitioners to attempt to have another three years to redeem the Wasson land."

which words must be read together with the concluding words of the appellate opinion:

> "Appellants are of course entitled by new proceedings in bankruptcy to obtain a discharge from the deficiency judgment which Wasson is said to have obtained against them, as from any other dischargeable debts they may owe. Wasson's debt could be reached by reviving the first filed amended petition, but we think it was within the discretion of the court to refuse to revive a stale proceeding, leaving appellants free to file a new one if they desire. Compare *Wragg* v. *Federal Land Bank,* 317 U.S. 325."

Both the bankruptcy court and the appellate court tempted the farmer debtors to abandon their original amended petition at R. 21 to 23 and rely upon an entirely new, and much later, invocation of Section 75 or of the regular bankruptcy act, referring them to the *Wragg* case.

But the facts in *Wragg* v. *Federal Land Bank*, 1943, 317 U.S. 325, differ from the Garlington case in this:

In the *Wragg* case the right to file an amended petition under Section 75 (s) was denied and the proceeding was dismissed. The farmer debtor attempted to appeal from the order of dismissal but failed. Thereby the first Wragg amended petition was abandoned and the farmer debtor's rights to invoke Section 75 (s) **as of that date lapsed.** Thereafter she filed her petition to reinstate her proceeding, or to file a new amended petition under Section 75 (s). This court held she might proceed anew. **In this Garlington case the proceeding was never dismissed** prior to the order of March 5, 1943, at R. 49, which was appealed and is now before this court for certiorari. **Their invocation of Section 75 (s) at R. 21 to 23 did not lapse.** As has been already stated the statement in the order at R. 49 that "this case, having been heretofore dismissed" is incorrect.

The answer of the farmer debtors to the suggestion that they abandon their amended petition at R. 21 to 23 and rely on a later amended petition is two-fold:

First: They are entitled to have their amended petition at R. 21 to 23 administered by the court according to the statute as in *Borchard* v. *California*, 1940, 310 U.S. 311, and in *Wright* v. *Logan*, 1942, 315 U.S. 139.

Second: They do not desire that their rights involving their creditors and their property as scheduled in their amended petition invoking Section 75 (s) at R. 21 to 23 be destroyed by the court merely because the court failed to recognize their petition and its own statutory duty. As determined by this court in *Wright* v. *Union Central*, 1938. 304, U.S. 502, at page 513:

> "it is the date of filing this request for adjudication as bankrupt which fixes 'the line of cleavage' as to the property."

That "line of cleavage" is the amended petition at R. 21 to 23.

Schedule A at R. 24 to 30 accompanying that amended petition which invoked Section 75 (s) shows many obligations. Schedule B at R. 32 to 34 shows the property involved.

Most of the property and the obligations there scheduled remain unadministered—the obligations due to Wasson and Perkins together with the property involved being among them.

In recapitulation:

The decisions below are contrary to the statute.

They conflict with the decisions of this court.

They depart from the accepted and usual course of judicial proceedings respecting the administration of Section 75.

They deprive the farmer debtors of their right to have their proceeding administered under their amended petition under Section 75 (s) filed October 25, 1939.

Wherefore the petitioners pray that a writ of certiorari be issued to the appellate court below.

Lima, Ohio
March 10, 1944

Respectfully submitted,

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Counsel for the Petitioners.

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Abilene, Texas

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Abilene, Texas
Of Counsel.

Supreme Court of the United States

OCTOBER TERM, 1943

No. 798

J. S. GARLINGTON and JENNIE LOU GARLINGTON,
Petitioners,

vs.

A. L. WASSON,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

MOTION

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MOTION

Counsel for the petitioners moves the court to state the reasons why their petition for certiorari was denied and in support thereof presents the following reasons:

1. After the record, petition and supporting brief of the petitioners had been submitted to the court, the only information coming to the petitioners or their counsel as to the result of said submission was a telegram from the

clerk stating that certiorari was denied on May 1, 1944. If any reason was stated by the court, counsel for the petitioners does not know what it was.

2. It is a common complaint of the bar of this court that counsel for the parties involved in a petition for certiorari which is denied is usually unable to discover why it was denied. So far as the contacts and observations of counsel for these petitioners go such complaint is universal among the bar but seldom, if ever, expressed to the court.

3. It is conceivable that in any given case a petition for certiorari may be denied, not because of the substance of the case presented, but merely because it has not been properly presented, or merely because the time is not ripe for presentation. If the reason were known, the defect could often be remedied.

4. In *Gypsy* v. *Escoe*, 1927, 275 U. S. 498, this Court in denying certiorari plainly informed the parties what was wrong procedurally and how to right it. But in the vast majority of instances no statement except "certiorari denied" is announced.

5. Where certiorari is denied because of the substantive law, it would seem that the parties and their counsel immediately concerned should know what point has been the basis of the denial of a review in this court, and it would seem that the public interest would require that the public generally have the same information.

6. Until counsel for a petitioner for certiorari knows why certiorari is denied, it is impossible to know what the denial of certiorari means—whether the court deems the matter was not properly or timely presented, or whether

it is deemed that the judgment complained of is right. Yet the bar has frequently been cautioned that denial of certiorari is not to be taken as approval or affirmation of the judgment below.

7. In nearly all cases the denial of certiorari means that the petitioner's rights which are involved are lost forever—unless as in *Kalb* v. *Feuerstein*, 1941, 313 U. S. 499, his counsel takes the risk of attempting to divine the reasoning of the court and after a total of eight years of litigation finally he attains the object of his original recourse to the federal courts.

8. In some instances it turns out that if the petitioner whose petition for certiorari was denied had kept his case in court, he would finally have succeeded, because later the precise question presented by his denied petition was subsequently decided in his favor. *In re Richmond*, 1938, 303 U. S. 657. *Wright* v. *Union Central*, 1938, 304 U. S. 502. *Wright* v. *Logan*, 1942, 315 U. S. 139. *John Hancock* v. *Bartels*, 1939, 308 U. S. 180.

9. In farmer debtor cases, the loss of his case, more often than in most litigation and practically always, means that the petitioner is destined to become a landless farmer. Usually the farm involved is all he has, except his family, his experience, and his implements, a circumstance which leads him inevitably into the class of tenants, and increases the prevalence of absentee farm ownership.

10. These reasons involve enormous social consequences which Chapters 8, 9, 10, 11, 12, 13, 14, and 15 of the Bankruptcy Act were designed to prevent. When such consequences, which come about almost imperceptibly, have fully developed into a set social change, there is no remedy which recourse to the courts can administer.

It is for all these reasons, and many others which a more extensive consideration of the subject would disclose, that this court is requested to state the reason, or reasons, why the petition for certiorari in this instance was denied.

Respectfully submitted,

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Lima, Ohio
May 16, 1944.

(19)

MAY 24 1944
CHARLES ELMORE CROPLEY
CLERK

Supreme Court of the United States

OCTOBER TERM, 1943

No. 798

J. S. GARLINGTON and JENNIE LOU GARLINGTON,
Petitioners,

vs.

A. L. WASSON,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR REHEARING.

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ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR REHEARING.

To the Honorable Chief Justice and the Associate Justices of the Supreme Court of the United States:

The petitioners respectfully present their petition for rehearing.

As stated in the motion requesting the court to state the reasons why certiorari was denied, which is presented with

this petition for rehearing, the petitioners do not know why their petition was denied. Consequently until they are informed, they must proceed in the best way they can under the existing circumstances.

The legislative branch of the United States government has done its part under its constitutional power to legislate on the subject of bankruptcies by enacting Chapters 8, 9, 10, 11, 12, 13, 14 and 15 of the Bankruptcy Act as codified at 11 U. S. C. The provisions of these chapters are permanent except those for municipalities and for farmer debtors which have been extended to 1946. The last two times that Section 75 was extended it was done for the purpose of giving time for a thorough revision of it. There is no doubt that it will be made permanent.

This legislation for the relief of individual, farmer, railroad, municipal, corporate, realty owner, wage earner and ship owner debtors greatly enlarged the exercise of the bankruptcy power delegated to the Congress in the Constitution.. The Act of March 3, 1933, being Chapter 8 of the Bankruptcy Act, which initiated the extension of the exercise of the granted power, was enacted upon the recommendations of the President, of the Chief Justice, and of the Department of Justice. Those eight chapters now provide adequate legal machinery for the relief of debtors without the surrender of their property to creditors. This is accomplished by transferring the lien and claims of creditors to the value of the debtor's property in place of permitting the property itself to be transferred to creditors. It is indeed a great progress from the original Roman bankruptcy law which permitted the creditors to dismember the body of their unfortunate debtor.

The age-old procedure of making secured loans to the

owners of property and taking the property from them when values are low has thus been legislatively extinguished. It was the legislative purpose, which is inviolable under the constitutional power exercised by the Congress, to forestall what exists in China today. That nation of vast potential aggregate wealth and resources lies relatively impotent and divided against itself because its small farmers have been dispossessed of their lands by grasping absentee money lenders who have seized mortgaged farm lands.

Had it not been for the enactment of these eight new chapters the producing property of our people would by this time have been in the hands of new, and mostly absentee, owners and the United States of America would be on the Chinese Road. It is only at the beginning of the turning that such a social and political calamity can be averted.

But our tripartite government of checked and balanced legislative, executive and judicial powers does not execute its will by the mere legislation of a national policy. It remains partly or wholly impotent without the cooperation and support of the judiciary. Against the first attacks, by those who never learn and never forget, upon the new debtor policy promulgated by the legislative branch of the government, it was wholly sustained fundamentally by this court and accepted in practice by creditors as to every class of debtors except alone farmer debtors.

The farmer debtor law as it was first enacted, as Section 75 (a) to (r), was an innocuous bit of legislation which by itself accomplished nothing but a slowing down of the inevitable foreclosure and seizure of the farmer debtor's farm. During the slow-down all the farmer debtor could do was to make a proposal to his creditors which they could accept or reject. It was only when the farmers insisted

that there should be no further debtor legislation for railroads and other corporate debtors until some teeth were put into the farmer debtor law, similar to those already in the corporate debtor laws, that the first Section 75 (s) was enacted.

From that time, that is from the passage of the first Section 75 (s), to the present moment the mortgage holders, and their sympathizers, have unceasingly contested the farmer debtor law. The federal land banks which were established to "solve the farm debt problem" and which have constantly been supported by the government, have been the leaders and encouragers of all farm mortgage holders who resist the constitutional legislative power of the nation. With their large, permanently retained legal staffs they have lead the attacks for all farm creditors.

Nothwithstanding the essential similarity in effect of the original Section 75 (s) to the corporate and railroad debtor laws, it was thrown out in *Louisville* v. *Radford*, 1935, 295 U. S. 555, chiefly because it deprived the mortgage holder of its "right to have a public sale at which it could bid." The attack against that enactment was secretly financed by the Association of Life Insurance Presidents none of whose members or their insurance companies, was party to the suit directly or indirectly. It was disclosed several years later that they spent in that battle to defeat the farmer debtor law the sum of $63,790.63, which was about fourteen times what the farm in that case was worth. Investigation of Concentration of Economic Power, Temporary National Economic Committee, 1939, 76th Congress, First Session, pages 4345 to 4555 and Exhibit No. 963 at page 4750.

After the Congress enacted the present Section 75 (s) to succeed the first, and put in it at Section 75 (s) (3) the provision that a farmer debtor might redeem his farm at its appraised value provided that the court must order a public sale if any secured creditor in writing requested it, this court in *Wright* v. *Union Central*, 1940, 311 U. S. 273 held that no such sale could be held until the farmer debtor first had an opportunity to redeem his farm at its value. That decision thus overruled the holding in *Louisville* v. *Radford*, 295 U. S. 555, that a public sale at which it could bid was one of the "rights" of a mortgage holder of which he could not constitutionally be deprived.

When the present Section 75 (s) came before this court on the question of its constitutionality, it was sustained in *Wright* v. *Vinton*, 1937, 300 U. S. 440, with, however, a suggestion in the text and in Note 6 at page 462 of the opinion that for lack of "a reasonable hope" or for lack of "good faith" a farmer debtor proceeding might lawfully be dismissed. That construction was reversed and disapproved in *John Hancock* v. *Bartels*, 1939, 308 U. S. 180, by the whole tenor of the opinion and expressly in Note 3. Also see *Wright* v. *Logan*, 1942, 315 U. S. 139.

These fundamental judicial determinations have not deterred the mortgage holders from continuing their unremitting attempts to break down the purpose of the law in its operation. In *Union Joint Stock Land Bank* v. *Byerly*, 1940, 310 U. S. 1, against the vigorous dissent of three Justices who held that the decision defeated the purposes of the law and provided a ready means of circumventing it, it was held that though a bankruptcy court, without any notice or hearing unlawfully purported to authorize a state court to proceed in foreclosure, the act of the state court

became valid, even though the farmer debtor knew nothing of the act of the bankruptcy court or of the act of the state court.

In *Pfister* v. *Northern Illinois,* 1942, 317 U. S. 144, the decision of the lower courts that a district judge has no jurisdiction to consider a petition for review after the lapse of the ten days named in Section 39(c) of the Bankruptcy Act was reversed. Farmer debtors think it significant that the same district court, by the same judge, had previously held that it had such jurisdiction. Although the lower courts were so reversed on the main legal issue, a century old precedent, repeatedly and uniformly observed by federal courts and approved by this court, was changed so that whether a court "entertains" a petition for rehearing and consequently "whether time for appeal would be enlarged or not would depend upon what the order showed the court did." Quoted from the opinion at page 151. That is, an application for rehearing of an order is filed at the price of learning whether time for appeal has expired or been extended, only by the content and wording of the subsequent order denying it. For in nearly every instance the thirty days for appeal will have expired before the conciliation commissioner has acted upon the application for rehearing. In other words it is the ultimate form in which the conciliation commissioner puts his denial of an application for rehearing which discloses whether he has "entertained" it and this is true even though, as in that case, he state in his finding that he had fully considered the whole proceeding.

The practical result of this decision was to permit a conciliation commissioner to violate Section 75 (s) (2) by charging $6375.00 rent for 2 years, 8 months, 13 days of

possession of an 80 acre, 20 cow, dairy farm; then order an additional $6375 to be paid within the same time, a total of $12,750; and then order the cows, feed and farm implements to be sold.

Again in *Harris* v. *Zion,* 1943, 317 U. S. 447, over the vigorous dissent of three Justices, it was held that the provision of Section 75 (r) that a personal representative of a deceased farmer is a farmer is dependent upon the law of the state despite the fact that while Section 74 was amended to require state authorization, yet Section 75 (r) was twice thereafter amended without requiring such authorization.

Again in *Carter* v. *Kubler,* 1943, 320 U. S. 243, where it was held that the district court disregarded a vital part of the valuation evidence by throwing out of consideration a $5800 previous valuation by the same court on the ground that it related only to "taxation purposes", yet it was held that the value set without such evidence was binding.

Counsel for the petitioners most respectfully present these facts, though none the less earnestly, because they illustrate the statement that while the other debtor laws embodied in the eight chapters of the Bankruptcy Act are accepted fully in practice, as well as in principle, we still have the unremitting and relentless opposition of the holders of mortgages on farm lands to the practical operation of Section 75. Unless the results of the legislation which created Section 75 are forthcoming in the actual adminis-

tration of farmer debtor cases there is no effective farmer debtor law.

What is involved is apparent when it is considered that in five years 453,000 farmers lost their farms through foreclosure, that is, one in twelve. And within a single year one in every nineteen was completely so wiped out. Address of the Administrator of the Office of Price Administration, February 8, 1944.

A statement made to a Congressional Committee which was printed and later published in the press, that a single corporate mortgage holder had accumulated several millions of dollars from resale of seized mortgaged farms has not been publically denied. Hearings, Special Subcommittee on Bankruptcy of the Committee on the Judiciary, 75th Congress, 2nd and 3rd Sessions, December 18, 1937, page 56.

What is not equally apparent is disclosed only by actual contact with farm realties. The ownership by farmers of the lands they own is the absolute necessity of a strong, virile nation. The number of court foreclosures does not adequately measure the drift to farm tenancy. For every single foreclosure in court there are scores of indebted farmers who are forced to surrender their titles through the intimidation of cunning and relentless mortgage holders. "Sign this deed and we will hold it for you and give you the time you ask; otherwise we will foreclose and put you off" are familiar words.

The history of the unceasing attempts to defeat the purpose of Section 75 by farm mortgage holders is an instance of the "trickle down" economic theory in reverse. Utterly defeated in their attempts to wipe the law off of the stat-

ute books, they have concentrated on preventing the farmer debtors from achieving the fruits of the law. Whenever a farmer debtor succeeds in maintaining his case through the three year stay he faces a strenuous contest for his right to redeem his farm at its value. If the mortgage holder can force the farm to a sale, then the law is utterly emasculated. The mortgage holder has won the battle. He may bid the full amount of his claim without paying down a cent of money and thus force an inflated fictitous value for redemption at a price much greater than if the farmer debtor had capitulated before he ever invoked the farmer debtor law. Thus farmers are "taught a lesson"—not to expect that Section 75 will aid them. New devices are constantly being employed to defeat the law.

What Has Happened in This Garlington Case.

1. The record is clear and the appellate court so found, that the farmer debtors filed their farmer debtor amended petition pursuant to Section 75 (s) in full compliance with the order of the bankruptcy court. R. 21 to 39. The clerk's filing date is found at R. 39. R. 90 to 93, the paragraph beginning at the bottom of R. 91 and ending at the middle of R. 92.

2. The bankruptcy court took no steps to administer the case under that amended petition but on the contrary entered an order that none had been filed. R. 75 and 76.

3. The farmer debtors in full compliance with the order of the court filed a second amended petition under Section 75 (s) without withdrawing their original amended petition. R. 47 to 49.

4. Having filed two amended petitions in complete compliance with the courts orders, they were ex post facto denied that right in the order appealed from. R. 49 to 50.

In *Wright* v. *Logan*, 1942, 315 U. S. 139, where lack of diligence had been imputed to the farmer debtors and made the basis of denying to them the right to proceed under their amended petition pursuant to Section 75 (s) this court said:

> "Section 75 (s) does not by its language condition a farmer's right to adjudication upon the diligence with which he has sought to obtain composition or extension under subsections (a) to (r). It 'applies explicitly to a case of a farmer who has failed to obtain the acceptance of a majority in number and amount of all creditors whose claims are affected by a proposal for a composition or an extension of time to pay his debts.' *John Hancock Ins. Co.* v. *Bartels*, 308 U. S. 180, 184. That was the situation of the farmers here. And 'the Act must be liberally construed to give the debtor the full measure of the relief afforded by Congress . . . lest its benefits be frittered away by narrow formalistic interpretations which disregard the spirit and the letter of the Act.' *Wright* v. *Union Central Ins. Co.*, 311 U. S. 273, 279. Farmers cannot be deprived of the benefits of the Act because a court may believe that they have received the equivalent of what it prescribes. Cf. *Borchard* v. *California Bank*, 310 U. S. 311. We think the *Bartels*, [308 U. S. 180], *Wright* [311 U. S. 273] and *Borchard* [310 U. S. 311] cases control our conclusion here, and that the court below was in error in dismissing the applications for adjudication under 75 (s)."

In the Garlingtons there was no lack of diligence. The inaction and delay was that of the court. Shall lack of diligence in the court to administer the case deprive a farmer debtor of the right to the benefits of Section 75?

Is a bankruptcy court to be permitted to compel a farmer debtor to abandon his properly filed amended petition under Section 75 (s) and to file another at a later time so as

to cause him to rest his property rights on conditions as they exist at the later date?

Is the farmer debtor to lose the rights in his property as they existed when his first amended petition was filed?

Is an appellate Court to be permitted to go outside of the record and surmise that it makes no difference anyway whether the first or the second amended petition is to be operative?

These are some of the questions which the petitioners for certiorari would have this court to hear.

If it should seem that there is undue insistence on this subject we repeat that there is intended no disrespect for the court but we would not minimize the earnestness with which it is presented. The amount, either of land, or of money immediately involved, is no indication of the hundreds of thousands of farmers and of the hundreds of millions of dollars that are involved in every farmer debtor case presented to this court.

The petitioners therefore pray that the denial of their petition for certiorari be reconsidered and that the petition be granted.

Respectfully submitted,

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Thomas E. Hayden,
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Lima, Ohio
May 16, 1944.

Certificate of Counsel.

I certify that the foregoing petition for rehearing is presented in good faith and not for delay.

ELMER MCCLAIN.